SUPREME COURT OF THE UNITED STATES.

No. 94.—October Term, 1925.

L. Littlejohn & Co., Inc.; General Silk Importing Company, Henry W. Peabody & Co., et al., Appellants, *vs.* The United States of America.	Appeal from the District Court of the United States for the Southern District of New York.

[March 1, 1926.]

Mr. Justice McReynolds delivered the opinion of the Court.

The court below sustained a challenge to its jurisdiction, and this direct appeal followed.

October 9, 1919, in New York Harbor the steamships "Antigone" and "Gaelic Prince" collided. Serious injury resulted to the latter and its cargo. February 19, 1921, relying upon the Suits in Admiralty Act of March 9, 1920 (c. 95, 41 Stat. 525), the owners seek to recover damages. The Act of March 3, 1925, c. 428, 43 Stat. 1112, is not applicable. They allege that the collision resulted from the fault of the "Antigone." Also that—

> At all the times mentioned herein prior to the 13th day of October, 1919, and particularly on the 9th day of October, 1919, the date of the collision hereinafter mentioned, the steamship "Antigone" was owned by a private person or merchant who was solely entitled to the immediate and lawful possession, operation, and control of said vessel. At no time prior to said 13th day of October, 1919, was the said steamship "Antigone" owned, either absolutely or *pro hac vice*, by the United States of America, nor by any corporation in which the United States of America or its representatives owned the entire outstanding capital stock, nor lawfully in the possession of the United States of America or of such corporation, nor lawfully operated by or for the United States of America or such corporation. On the 13th day of October, 1919, the respondent United States of America became, ever since has

been, and now is in the lawful possession of the steamship "Antigone," but at no time has the United States of America held the legal title to or been the absolute owner of said steamship "Antigone."

The United States appeared specially and suggested that when the collision occurred they owned, possessed and controlled the "Antigone" and therefore the court was without jurisdiction. This was denied and evidence was taken upon the consequent issue. Having considered the evidence, the court held that the United States owned the vessel and were navigating her, with a crew employed by the War Department, in transporting supplies and troops. The libels were accordingly dismissed for want of jurisdiction.

If the established facts show such ownership, possession and control, then, under the doctrine of *The Western Maid,* 257 U. S. 419, to which we adhere, the decree is clearly right.

The history of the matter is this. The "Antigone"—then the privately-owned German merchantman "Neckar"—took refuge within the United States prior to April 6, 1917, when war with Germany was declared. By Joint Resolution of May 12, 1917, c. 13, 40 Stat. 75 (copied in the margin*), Congress authorized the President to take over to the United States the immediate posses-

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

sion and title of any vessel within their jurisdiction which at the time of coming therein was owned by any corporation, citizen or subject of an enemy nation, or was under register of any such nation. By Executive Order of June 30, 1917, the President affirmed that the "Neckar" was such a vessel and ordered that "the possession and title" be taken over through the United States Shipping Board. He further authorized that Board to repair, equip, man and operate her. It accordingly took her, July 17, 1917, and thereafter a naval board appraised her. Subsequently she was transferred to the Navy Department, re-named the "Antigone," and later transferred to the Army Transport Service. October 9, 1919, she sailed under a master, officers and crew of the United States Transport Service from New York bound for Brest, from which port she was to return with troops.

Appellants say that the rules of international law as recognized by the United States forbade them from confiscating German vessels within their jurisdiction at outbreak of the war, and that the Resolution of May 12, 1917, should be so interpreted as to harmonize with these rules. They further insist that thus interpreted the Resolution only gave authority to detain and operate the "Antigone" as enemy property, leaving title in the original German owners and the vessel subject to ordinary maritime liens. Our attention is called to the course pursued by the British government and to certain decisions of their courts. *The Chile*, 1 Br. & Col. Prize Cases 1; *The Gutenfels*, 2 *id.* 36; *The Prinz Adalbert*, 3 *id.* 70, 72; *The Blonde*, L. R. (1922) 1 A. C. 313, 334.

Both Great Britain and Germany were parties to Convention VI of the Second Hague Peace Conference, 1907,* and the action of

*Article 1. When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Article 2. A merchant ship unable, owing to circumstances of force *majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, can not be confiscated.

The belligerent may only detain it, without payment of compensation, but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

the former, referred to by counsel, was taken in view of obligations thus assumed. The United States did not approve that convention, and the cited cases involved problems wholly different from the one here presented.

It is unnecessary to consider how far the ancient rules of international law concerning confiscation of enemy property have been modified by recent practices. In the absence of convention every government may pursue what policy it thinks best concerning seizure and confiscation of enemy ships in its harbors when war occurs. The Hague Conference (1907) recognized this and sought by agreement to modify the rule. *The Blonde, supra,* p. 326. Our problem is to determine the result of action taken under a Joint Resolution of Congress whose language is very plain and refers only to enemy vessels. It authorized the President to take "possession and title," and, obeying, he took them. We do not doubt the right of any independent nation so to do without violating any uniform or commonly accepted rule of international law; and Congress had power to authorize the action irrespective of any general views theretofore advanced in behalf of this government. Certainly all courts within the United States must recognize the legality of the seizure; the duly expressed will of Congress when proceeding within its powers is the supreme law of the land.

Brown v. *United States,* 8 Cranch 110, 122—"That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall chuse to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the Court." See *Miller* v. *United States,* 11 Wall. 268; *The Blonde, supra.*

The decree of the court below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

4